



IN THE MATTER OF:

Complainant,

**NEWMAN HALL, A DIVISION OF ST.
JOHN'S CATHOLIC CHAPEL,**

Respondent.

CHARGE NO: 1999SA0103
EEOC NO: 21B983201
ALS NO: S-11133

This matter comes before me on a motion by Respondent to dismiss this case with prejudice due to the failure of Complainant's personal representative to file a motion to substitute him or herself as a party for the purpose of proceeding in this case. No one filing on behalf of Complainant's estate has filed a response to the motion, although the time for doing so has passed.

Respondent submits that this case should be dismissed with prejudice since no one has filed a proper motion for substitution within 90 days after the Commission received notice of Complainant's death.

Based upon the record in this matter, I make the following findings of fact:

1. On August 10, 1998, Complainant filed a Charge of Discrimination on his own behalf, alleging that he was the victim of age and race discrimination when Respondent terminated him from his position as a custodian.

2. On December 16, 1999, the Department of Human Rights filed a Complaint on behalf of Complainant, alleging that Complainant was the victim of age and race discrimination when Respondent terminated him from his custodian position.

3. On November 9, 2001, a relative of Complainant informed the Commission of Complainant's death. At that time, an Order was entered which required Complainant's estate or any other proper party to file a motion for substitution by February 11, 2002.

4. On December 7, 2001, Complainant's sister filed a handwritten request to represent Complainant.

5. On January 22, 2002, the request to substitute by Complainant's sister was denied without prejudice since the request did not contain appropriate documents indicating that Complainant's sister had the right to proceed on behalf of Complainant's estate. The Order gave Complainant's sister until February 28, 2002 to file another motion for substitution that contained the appropriate documentation indicating that she had the authority to proceed on behalf of Complainant's estate.

6. Neither Complainant's sister nor anyone else has filed a motion to substitute pursuant to the Order of January 22, 2002.

7. On March 7, 2002, Respondent filed a motion to dismiss this case with prejudice due to the failure of anyone to file an appropriate motion to substitute by the time frame set forth in the Order of January 22, 2002.

Conclusion of Law

A Complaint may be dismissed as to a deceased party if a motion to substitute is not filed within 90 days after the death is suggested of record.

Discussion

Section 5300.660(b) of the Commission's Procedural Rules (56 Ill. Admin. Code, Ch. XI, §5300.660(b)) sets forth the requirements for the substitution of a party who has

died subsequent to the filing of a complaint before the Commission. Under that section, a complaint may be dismissed for want of prosecution if a proper motion for substitution has not been filed within 90 days after the death of the party is suggested of record. Here, an Order was entered on November 9, 2001, which noted the suggestion of Complainant's death and directed Complainant's estate or any other proper party file a motion to substitute by February 11, 2002. While Complainant's sister attempted to substitute herself as proper party on December 7, 2001, Complainant's sister failed to indicate that she was the proper representative of Complainant's estate. Moreover, no one else has made a proper motion to substitute within the time frame set forth by the Order of January 22, 2002. Given this failure, as well as the apparent difficulty of prosecuting an action without the input of a complainant, there is nothing more for the Commission to do other than to dismiss this case for want of prosecution.

Recommendation

For all of the above reasons, I recommend that the Complaint and the underlying Charge of Discrimination of James Baker be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 19th DAY OF JULY, 2002.